

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

MAY 31 2005

U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte B. MICHAEL ECKARD, ERIC J. JOHNSON  
CHRISTOPHER TAYLOR and ANTONI MURCIA

Application No. 09/773,054

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on April 5, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

A review of the application indicates that the following sections are missing from the Appeal Brief of December 9, 2004:

- 1) "Evidence appendix", as set forth in 37 CFR § 41.37(c)(1)(ix); and
- 2) "Related proceedings appendix", as set forth in 37 CFR § 41.37(c)(1)(x).

A substitute brief that is in compliance with 37 CFR § 41.37(c) is required. For more information on the Board's new rules see the web page entitled More Information on the Rules of Practice Before the BPAI, Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

A Reply Brief was timely filed on March 31, 2005. However, it appears that the examiner has not considered this paper. The Reply Brief needs to be considered by the examiner with respect to compliance with the criteria set forth in 37 CFR § 41.43(a) which states:

**(a)(1) After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.**

Finally, the Notice of Appeal fee was charged on October 4, 2004. However, it was recorded under Application No. 08/773,054 not 09/773,054. This error in fees needs to be corrected. Accordingly it is

**ORDERED** that the application is returned to the Examiner to:

- 1) hold the Appeal Brief of December 9, 2004 defective;
- 2) have the applicant file a substitute Appeal Brief in compliance with 37 CFR § 41.37;

- 3) consider the substitute Appeal Brief;
- 4) consider the Reply Brief filed on March 31. 2005;
- 5) have the Notice of Appeal fee corrected; and,
- 6) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
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